

## MILITARY COMMISSION RULES ON MOTIONS IN HICKS CASE

U.S. NAVAL BASE GUANTANAMO BAY, CUBA – Military Commission proceedings resumed today in the case of *U.S. v David M. Hicks* and are expected to continue for the remainder of this week.

This week's proceedings are intended to address the numerous pretrial motions filed by the prosecution and defense. Today, some of those motions were decided by the three-member commission. Others, according to Col. Peter Brownback, the presiding officer, will be determined "in due course."

One aspect of the military commissions that differs from court-martial practice is that the entire panel of commission members decides the pretrial motions; whereas, in a court-martial, a military judge would make such rulings. In that regard, Brownback announced during today's proceedings that he had erred during the previous proceedings in August when he stated on the record that he would instruct the panel members on issues of law. Brownback is the only panel member who is an attorney. But, today, he stated on the record that each panel member would speak with an equal voice on issues of law.

Among the motions decided today were those related to the defense request for the testimony of expert witnesses on the law of armed conflict. The defense argued that, given the complexities of that body of law, the panel should have the benefit of law professors and those with such expertise to assist them in understanding and applying that law. After a brief deliberation, the panel ruled that such expert testimony was not needed at this time. Therefore, the defense motions were denied.

The panel also denied the prosecution's motion that would have denied the use of expert legal testimony throughout the entire proceedings. The prosecution argued that each side was represented by counsel and that the proper approach is for counsel to prepare briefs and argue the legal issues for the panel's benefit. They further argued that, to permit such legal experts to testify as witnesses would turn the proceedings into a "battle of experts" on behalf of each side. The panel determined that they would instead reserve the right to hear such experts in the future if they felt it necessary, making that determination on a case-by-case basis.

Among the motions to be determined after further panel deliberation are several defense motions to dismiss the case against Hicks. The defense argued that, in light of the successful challenges which reduced the number of panel members to the minimum of three, the panel cannot provide a full and fair trial in accordance with its Presidential mandate. The prosecution argued that the rules provide for a minimum of three members and, so long as that number is available, then there is no reason not to proceed. Other pending motions that were argued today involve whether it is mandatory for certain questions to be forwarded at this point to the appointing authority for his decision and to what extent certain provisions of the Uniform Code of Military Justice apply.

The proceedings are in recess until 9:30 am on Tuesday. Motions being argued can be viewed at: [http://www.defenselink.mil/news/Aug2004/commissions\\_motions.html](http://www.defenselink.mil/news/Aug2004/commissions_motions.html)